

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patricia Schnupp	Team: Team # 4	CCRB Case #: 200916472	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thu, 10/08/2009 1:00 PM	Location of Incident: West 139th Street & Lenox Avenue; 32nd Precinct Stationhouse	Precinct: 32	18 Mo. SOL 04/08/2011	EO SOL 4/8/2011	
Date/Time CV Reported Tue, 10/20/2009 1:00 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 10/22/2009 12:27 PM		

Complainant/Victim	Type	Home Address
1. [REDACTED]	Comp/Victim	[REDACTED]
2. [REDACTED]	Reporting Non-Witness	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM James Diaz	24459	934761	032 PCT
2. POM Francisco Adames	04449	939842	032 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Matthew Reid	03308	925973	032 PCT
2. POM Hameed Armani	10402	941360	032 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Francisco Adames	Abuse of Authority: PO Francisco Adames threatened [REDACTED] with the use of force on West 139th Street and Lenox Avenue.	A . Unsubstantiated
B . POM Francisco Adames	Abuse of Authority: PO Francisco Adames strip-searched [REDACTED] at the 32nd Precinct stationhouse.	B . Substantiated
C . POM James Diaz	Abuse of Authority: PO James Diaz strip-searched [REDACTED] at the 32nd Precinct Stationhouse.	C . Substantiated

Case Summary

On October 20, 2009 [REDACTED] filed a complaint on the CCRB website on behalf of [REDACTED]. Ms. [REDACTED] did not witness this incident. On October 8, 2009 at 1:00 p.m. [REDACTED] was stopped on West 139th Street and Lenox Avenue by PO Francisco Adames, Sgt. Matthew Reid, PO James Diaz and PO Hameed Armani of the 32nd Precinct and taken back to the stationhouse. Mr. [REDACTED] was strip-searched and issued a summons for disorderly conduct. The following allegations resulted from the officers' actions.

- **Allegation A: Abuse of Authority:** PO Francisco Adames threatened [REDACTED] with the use of force on West 139th Street and Lenox Avenue. It was not possible to make a determination of fact regarding this allegation and it is recommended that Allegation A be **unsubstantiated**.
- **Allegation B: Abuse of Authority:** PO Francisco Adames strip-searched [REDACTED] at the 32nd Precinct stationhouse.
- **Allegation C: Abuse of Authority:** PO James Diaz strip-searched [REDACTED] at the 32nd Precinct stationhouse. PO Adames and PO Diaz admitted to strip-searching Mr. [REDACTED] and did so without justification. Therefore it is recommended that Allegations B and C be **substantiated**.
- **Allegation D: Abuse of Authority:** Sgt. Matthew Reid authorized the strip-search of [REDACTED] at the 32nd Precinct stationhouse.
- **Allegation E: Other Misconduct:** Sgt. Matthew Reid failed to document the strip-search of [REDACTED] at the 32nd Precinct stationhouse as required by Patrol Guide Procedure 208-05. The preponderance of evidence indicated that Sgt. Reid did authorize the strip-search of Mr. [REDACTED] and he failed to document it. Therefore it is recommended that Allegation D be **substantiated** and that Sgt. Reid be cited for **other misconduct**.

This case was originally assigned to Inv. Slater. It was transferred to ASI Higginbotham, Inv. Gerstein then to Inv. Schnupp on September 13, 2010.

Results of Investigation

Civilian Statement

Complainant: [REDACTED] (encl. 6A-6C)

- [REDACTED] was interviewed at the CCRB on November 2, 2009. [REDACTED] is a black male, 5'7", 130 pounds, who was 17 years old at the time of the incident.

On October 8, 2009, at approximately 1:00 PM, Mr. [REDACTED] walked from his grandmother's apartment at [REDACTED] on Lenox Avenue for two blocks. [REDACTED] crossed Lenox Avenue. Mr. [REDACTED] did not encounter any friends or speak with anyone. Mr. [REDACTED] turned around and saw a South Asian male plainclothes officer about 5'8" and later identified as PO Adames. PO Adames grabbed the front of Mr. [REDACTED] track jacket and turned him around. After he was grabbed, Mr. [REDACTED] put his hands straight up in the air. Mr. [REDACTED] said, "Why'd you stop me? I didn't do nothing" and PO Adames said, "Shut up or I'll break your fucking jaw." PO Adames pushed Mr. [REDACTED] down with his back against the hood of a parked car. An unmarked car pulled up with four plainclothes officers inside. Two officers exited the car, later identified as Sgt. Matthew Reid and PO James Diaz. Sgt. Reid patted Mr. [REDACTED] down, handcuffed him then drove him to the 32nd Precinct.

At the front desk the officers took everything out of Mr. [REDACTED] pockets and placed him in a holding cell. PO Adames and PO Diaz took Mr. [REDACTED] out of the cell and around the corner in a hall next to old cells where he was not visible to any other prisoners. The officers told him to take off all of his clothes and he did until his boxers. Both officers directed him to take off his boxers and he complied. The officers searched through Mr. [REDACTED] clothes, failed to find anything then told him to get dressed. PO Diaz walked in and handed Mr. [REDACTED] a ticket for blocking vehicular traffic.

NYPD Statements:

Subject Officer: PO FRANCISCO ADAMES (encl. 11A-11B)

- *PO Adames is a 5'10" 160lbs Hispanic male with brown hair and brown eyes. On October 8, 2009, PO Adames worked from 9:30 a.m to 6:05 p.m. PO Adames was assigned to the anti-crime unit with PO Diaz and Sgt. Reid. PO Adames was dressed in plainclothes and assigned to an unmarked RMP, #0198, a blue impala. PO Adames was interviewed at the CCRB on February 24, 2010.*

At approximately 1:00 p.m. PO Adames, PO Diaz and Sgt. Reid were in their vehicle and observing a drug prone location on the corner of West 138th Street and Lenox Avenue in Manhattan. Mr. [REDACTED] and an unidentified male met on the northwest corner of the intersection. PO Adams observed Mr. [REDACTED] exchange a small object for U.S. currency but did not see the object itself. All three officers exited the vehicle to apprehend to the two men. PO Adames approached Mr. [REDACTED] while the other two officers pursued the unidentified man, who took off on foot. PO Adames observed PO Diaz and Sgt. Reid run down West 139th Street in pursuit of the unidentified man but turned around without having apprehended him. Mr. [REDACTED] was standing in the middle of West 139th Street and Lenox Avenue, blocking eastbound traffic, with his right hand in his pocket. PO Adames asked to see his hand then reached for his right hand. Mr. [REDACTED] struck PO Adames with his left hand. PO Adames placed Mr. [REDACTED] in handcuffs, walked him to the sidewalk then frisked him. PO Adames did not hear anyone say to Mr. [REDACTED] "shut up or I'll break your fucking jaw" nor did he say that to Mr. [REDACTED]

At the stationhouse, POs Adames and Diaz removed Mr. [REDACTED] property at the front desk and no contraband was found. PO Adames asked Sgt. Reid for permission to conduct a more thorough search of Mr. [REDACTED] since no contraband was found. Sgt. Reid gave PO Adames and PO Diaz permission to search Mr. [REDACTED] by taking off his clothes down to his boxers. Both officers asked Mr. [REDACTED] to remove his clothes down to his boxers and he did. The officers did not find any contraband. Mr. [REDACTED] was issued a summons for disorderly conduct for blocking vehicular traffic.

Subject Officer: PO JAMES DIAZ (encl. 9A-9C)

- *PO James Diaz is a 30 year old 5'5" 160lbs Hispanic male with brown hair and brown eyes. On October 8, 2009, PO Diaz worked from 9:30 a.m. to 6:05pm. PO Diaz was assigned to the anti-crime unit with PO Adames and Sgt. Reid. PO Diaz was dressed in plainclothes and was assigned to an unmarked vehicle. PO Diaz was interviewed at the CCRB on February 19, 2010.*

PO Diaz corroborated PO Adames regarding Mr. [REDACTED] engaging in a hand to hand transaction prior to being stopped and after that he was combative after being stopped. PO Diaz also corroborated that the other individual ran away, however, he did not state that he chased after this

person. PO Diaz denied that anyone threatened to break Mr. [REDACTED] jaw. PO Diaz corroborated PO Adames regarding the more thorough search of Mr. [REDACTED] down to his underwear. PO Diaz did not recall asking for or receiving authorization from Sgt. Reid for a more thorough search of Mr. [REDACTED] at the stationhouse. PO Diaz stated it was the officers' own initiative to take this action since people involved in narcotics transactions are known to conceal narcotics in their underwear.

Subject Officer: SGT. MATTHEW REID (encl. 15A-15B)

- *Sgt. Matthew Reid is a 32 year-old 5'8" 175lbs white male with brown hair and blue eyes. On October 8, 2009, Sgt. Reid worked from 9:30 a.m. to 6:00 p.m. assigned as the anti-crime supervisor. Sgt. Reid was working with PO Armani. Sgt. Reid was dressed in plainclothes and assigned to an unmarked vehicle. Sgt. Reid was interviewed at the CCRB on January 20, 2010.*

Sgt. Reid corroborated PO Diaz and PO Adames regarding Mr. [REDACTED] behavior prior to the stop. Sgt. Reid further corroborated Mr. [REDACTED] combative behavior after the stop. Sgt. Reid denied that anyone threatened to break Mr. [REDACTED] jaw. Sgt. Reid did not authorize a strip-search or any further search of Mr. [REDACTED]

Witness Officer: PO HAMEED ARMANI (encl. 13A-13B)

- *PO Hameed Armani is a 32 year old 5'10" 160lbs South Asian male with black hair and brown eyes. On October 8, 2009, PO Armani worked from 9:30 a.m. to 6:10 p.m., assigned to the anti-crime unit. PO Armani does not recall with whom he was working. PO Armani was dressed in plainclothes and assigned to an unmarked vehicle which was either a black Crown Victoria or a Blue Chevy Impala. PO Armani was interviewed at the CCRB by February 9, 2010.*

PO Armani corroborated the officers' testimony regarding Mr. [REDACTED] behavior prior to being stopped. PO Armani did not exit the vehicle during this stop and did not hear any conversation between Mr. [REDACTED] and the officers. PO Armani did not know if Mr. [REDACTED] was strip-searched or if a further search was conducted back at the stationhouse.

NYPD Documents

Summons (encl. 8A)

At 1:00 p.m. on October 8, 2009 Mr. [REDACTED] was issued a summons for blocking vehicular traffic on the eastbound side of 138th Street and Lenox Avenue in Manhattan.

Command Log (encl. 16A)

There is no notation indicating Mr. [REDACTED] was strip-searched.

Summons for Incident and Disposition

- There is no public record regarding the disposition of Mr. [REDACTED] summons.

Status of Civil Proceedings

- As of September 16, 2010 Mr. [REDACTED] has not filed a notice of claim.

Civilian Criminal History (encl. 19A-19C)

- [REDACTED]

Civilian CCRB History (encl. 3A)

- [REDACTED] has filed the following CCRB complaints: Case number 200803669, which was exonerated and 200917405, which was forwarded to IAB.

Subject Officers CCRB History (encl. 2A-2C)

- PO Adames has been a member of the service for four years and there are no substantiated CCRB allegations against him.
- PO Diaz has been a member of the service for six years and there are no substantiated CCRB allegations against him.
- Sgt. Reid has been a member of the service for 10 years and there is 1 substantiated CCRB allegations against him. In CCRB case number 200906871 panel 6B substantiated an abuse of authority-vehicle search allegation and recommended Sgt. Reid be brought up on charges. The NYPD disposition for this allegation is currently pending.

Conclusion

Identification of Subject Officers

- PO Diaz, PO Adames and Sgt. Reid all confirmed their involvement in this incident during their CCRB testimony. Furthermore, Mr. [REDACTED] provided physical descriptions that match these three officers.

Allegations Not Pled

The stop and frisk allegations are not pleaded in this complaint because disputing the justification for these actions would amount disputing the reason for the issuance of the summons, which is out of the jurisdiction of the CCRB.

Investigative Findings and Recommendations

Allegation A: Abuse of Authority: PO Francisco Adames threatened [REDACTED] with the use of force on West 139th Street and Lenox Avenue. Mr. [REDACTED] claimed that PO Adames threatened to break his jaw. PO Adames and all of the other officers present denied that this happened. There were no witnesses to this incident and absent any other evidence it is not possible to make a determination of fact regarding this allegation. Therefore it is recommended that Allegation A be **unsubstantiated**.

Allegation B: Abuse of Authority: PO Francisco Adames strip-searched [REDACTED] at the 32nd Precinct stationhouse.

Allegation C: Abuse of Authority: PO James Diaz strip-searched [REDACTED] at the 32nd Precinct stationhouse.

PO Adames and PO Diaz admitted to making Mr. [REDACTED] strip to his underwear while Mr. [REDACTED] claimed that he was made to remove his underwear. The officers insisted this was not a strip-search since Mr. [REDACTED] underwear was still on. This factual dispute between Mr. [REDACTED] and the officers is irrelevant because according to NYPD Interim Order 2 2009 (encl. 1A-1B) the exposure of an arrestee's undergarments during a search constitutes a strip-search. What the officers testified to amounts to a strip-search. According to Patrol Guide procedure 208-05 (encl.

AA-BB) a strip-search is necessitated when officers reasonably suspect that contraband is concealed upon a person in such a manner that it would not otherwise be recovered during a regular search. In this instance the officers allegedly observed Mr. [REDACTED] engage in a hand-to-hand transaction in which Mr. [REDACTED] exchanged U.S. currency with an un-apprehended other individual for an unknown item. This other individual was not apprehended and both officers could not specify that it was narcotics exchanged for money. Furthermore, no contraband was found during the routine search of Mr. [REDACTED] after his arrest. Mr. [REDACTED] is not known to these officers as a neighborhood drug dealer and aside from the alleged occurrence of a possible hand-to-hand transaction, the officers did not articulate any other reason to suspect Mr. [REDACTED] had contraband concealed elsewhere on his person. Despite the officers' claim that their behavior did not amount to conducting a strip-search, it did, and the strip-search lacked proper justification. Therefore it is recommended that Allegations B and C be **substantiated**.

Allegation D: Abuse of Authority: Sgt. Matthew Reid authorized the strip-search of [REDACTED] at the 32nd Precinct stationhouse. Sgt. Reid denied authorizing any strip-search or further search of Mr. [REDACTED] upon arrival at the 32nd Precinct. PO Adames testified he requested authorization to "further" search Mr. [REDACTED] from Sgt. Reid and that Sgt. Reid authorized a search down to Mr. [REDACTED] underwear. PO Diaz could not recall if he and PO Adames requested authorization from Sgt. Reid. Sgt. Reid was at the arrest location, was aware of the circumstances surrounding the arrest and as explained above no part of the incident provided legal justification for the strip-search. According to *NYPD v. Ondreickas* (encl. A-Z), with regard to a strip-search, a supervisor has a duty to ensure a search is conducted properly. The CCRB credit's PO Adames' testimony regarding this allegation and because Sgt. Reid authorized an unjustified strip-search it is recommended that Allegation D be **substantiated**.

Allegation E: Other Misconduct: Sgt. Matthew Reid failed to document the strip-search of [REDACTED] at the 32nd Precinct stationhouse as required by Patrol Guide Procedure 208-05. The investigation determined that Sgt. Reid authorized the strip-search of Mr. [REDACTED]. The investigation determined a strip-search occurred yet Sgt. Reid claimed to have no knowledge it occurred. As a supervisor Sgt. Reid is responsible for knowing what his officers are doing and documenting certain actions, particularly strip-searches that occur during his shift. According to Patrol Guide procedure 208-05 "If a strip-search is conducted, such information will be entered into the command log" (encl. AA-BB). There is no command log notation documenting Mr. [REDACTED] strip-search despite the fact that it happened. Therefore it is recommended that Sgt. Reid be cited for **other misconduct**.

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date